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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

18 ANDREW SOSA,

Case. No. 3:25-cv-01310-WHO

19 Plaintiffs,

**YOUTUBE, LLC'S NOTICE OF
MOTION AND MOTION TO DISMISS**

21 v.

Date: October 15, 2025

22 WARNER BROS. ENTERTAINMENT
23 INC., et al.,

Time: 2:00 p.m.

24 Defendants.

Location: Courtroom 2, 17th Floor

Judge: William H. Orrick

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NOTICE OF MOTION AND MOTION TO DISMISS

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on October 15, 2025, at 2:00 p.m., or as soon as the
4 matter may be heard in the above-entitled court, located at 450 Golden Gate Avenue,
5 San Francisco, California, in Courtroom 2, 17th Floor, Defendant YouTube, LLC, by and
6 through its counsel of record, will and hereby does move the Court for an order
7 dismissing Plaintiff's Complaint under Rule 12(b)(6) of the Federal Rules of Civil
8 Procedure.

9 This Motion is based on this Notice of Motion and Motion, the Memorandum of
10 Points and Authorities herein, the pleadings and papers on file in this action and any
11 argument and evidence to be presented at the hearing on this Motion, and any other
12 matters that may properly come before the Court.

STATEMENT OF ISSUES

14 1. Whether Section 230 of the Communications Decency Act immunizes
15 YouTube, as a matter of law, from Plaintiff's claim against YouTube.

16 2. Whether Section 512(g) of the Digital Millennium Copyright Act (DMCA)
17 immunizes YouTube, as a matter of law, from Plaintiff's claim against YouTube.

18 3. Whether Plaintiff's claim against YouTube is preempted by the DMCA.

19 4. Whether Plaintiff's claim against YouTube fails because Plaintiff's
20 Complaint does not seek relief cognizable under California's Unfair Competition
21 (UCL).

22 5. Whether Plaintiff's claim against YouTube fails because Plaintiff has not
23 alleged that YouTube engaged in any "unfair" conduct under the UCL.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

YouTube¹ allegedly removed Plaintiff's video review of Batman after receiving a takedown request from Warner Bros under the Digital Millennium Copyright Act (DMCA). Plaintiff now sues YouTube under California's Unfair Competition Law (UCL) for some vague and undescribed delay in YouTube reinstating that video on its website. For several reasons, Plaintiff's UCL claim must be dismissed.

8 First, YouTube enjoys complete immunity under the Communications Decency
9 Act (CDA) for its decision to remove a user’s content. That decision is quintessential
10 “publisher” activity such that this is an open-and-shut case warranting dismissal under
11 47 U.S.C. § 230(c)(1), as this Court recognized on nearly identical facts only a couple of
12 months ago. *Hall v. YouTube, LLC*, No. 24-cv-04071-WHO, 2025 WL 1482007, at *7 (N.D.
13 Cal. May 5, 2025) (Orrick, J.). Second, YouTube enjoys immunity under the CDA’s
14 second immunity provision, 47 U.S.C. § 230(c)(2), which shields YouTube for its decision
15 to remove content that it finds objectionable, and content that may subject YouTube to a
16 claim of copyright infringement by Warner Bros. is certainly “objectionable” by any
17 measure.

18 Third, *another* federal law immunizes YouTube against Plaintiff's claim here: the
19 DMCA itself. The DMCA provides blanket immunity to service providers for "disabling
20 of access to, or removal of, material or activity claimed to be infringing[.]" 17 U.S.C. §
21 512(g)(1). Plaintiff's suit arises out of YouTube's removal of his video, which Warner
22 Bros. alleged to be infringing. Plaintiff has not alleged any facts to suggest that an
23 exception to Section 512(g)(1) would apply.

1 Google LLC was originally a named defendant in this action, but Plaintiff's Third
25 Amended Complaint (Doc. 51) dropped Google LLC without explanation. As a matter of
26 law, Google LLC has therefore been voluntarily dismissed. *See, e.g., Wilens v. Automatic
27 Inc.*, No. C 14-02419 LB, 2014 WL 3530782, at *1 (N.D. Cal. July 16, 2014) (recognizing
28 that amended complaint dropping a defendant named in the original complaint
effectively dismisses that defendant from the action); *Hafiz v. Indymac Fed. Bank*, No. C
09-02300 SI, 2009 WL 2982830, at *2 (N.D. Cal. Sept. 14, 2009) (same). Nonetheless, the
arguments asserted in this Motion apply to both Google and YouTube.

1 Fourth, even if YouTube were *not* immunized by both the CDA and the DMCA,
2 the DMCA is nevertheless a federal law that fully preempts Plaintiff's sole claim
3 asserted against YouTube for alleged violations of the UCL. The DMCA represents a
4 complex and comprehensive federal law describing how YouTube is expected to act in
5 connection with copyright takedown requests, user counternotices, and the
6 reinstatement of content originally removed pursuant to a takedown request. That the
7 DMCA does not provide a private right of action to Plaintiff for YouTube's alleged acts
8 here is dispositive.

Finally, Plaintiff's barebones complaint has not stated a UCL claim against YouTube. For one, he has not sought any relief that is even cognizable under the UCL, nor has he alleged that he lacks an adequate remedy at law sufficient to permit a UCL claim to be adjudicated in federal court. For another, he has not identified any YouTube conduct that could reasonably be viewed as "unfair" under any standard. To the contrary, he has described conduct that is expressly *permitted* by federal law, the DMCA, which courts have recognized to preclude a UCL unfairness claim.

16 For these many reasons, the case should be dismissed with prejudice.

II. BACKGROUND

18 Remarkably few facts can be plucked from Plaintiff's skeletal Fourth Amended
19 Complaint (4AC).² Doc. 53. The allegations against YouTube consist merely of a
20 conclusory recitation of the UCL elements. The only *facts* alleged are as follows:

- Plaintiff uploaded to YouTube a “video review of a Batman movie he had seen.” 4AC at 10.

24 ² Despite being labeled a “First-Amended Complaint,” Plaintiff’s active complaint is
25 indeed his fourth in this action. Doc. 53. His first and second complaints were filed in
26 Texas state court on February 26, 2024 and April 2, 2024, respectively. His third
27 complaint was filed in this court on July 21, 2025. Doc. 51. And his instant complaint was
28 filed August 12, 2025 (and is admittedly identical to his third amended complaint,
except that it corrects an allegation about himself, because his third amended complaint
described a Washingtonian “Abraham Leavitt” as plaintiff).

- Warner Bros. “sent a false noticed [sic] of claimed infringement to YouTube” about that video, because that video did not infringe on any Warner Bros. copyright. *Id.*
- Warner Bros “later withdr[e]w the notice of claimed infringement.” *Id.* at 12.
- While YouTube reinstated Plaintiff’s video, YouTube failed to place that video “on the same footing as to where it would have been had the withdrawn claim not been filed,” and also that the period of time for which the video was removed was an “important” one. *Id.* at 20-21.

10 Plaintiff further alleges that YouTube failed to “process and respect” some
11 unidentified counternotice, though he does not allege any facts regarding when such
12 counternotice was purportedly sent or to whom. *Id.* at 19.

Without exaggeration, the entirety of the 4AC's factual allegations against YouTube can therefore be combined into a single sentence: Warner Bros. sent a DMCA takedown notice, YouTube removed Plaintiff's video in response, Warner Bros. then withdrew its takedown notice, Plaintiff *might* have sent a DMCA counternotice, and YouTube reinstated the video. Because such a complaint cannot possibly satisfy federal pleading standards, the action should be dismissed. And granting leave for Plaintiff to file a *fifth* amended complaint would be futile, because even if Plaintiff could fill in the many missing blanks, federal laws preclude any action remotely like this.

III. ARGUMENT

A. The CDA bars this action.

23 Section 230 of the CDA has two parts, both of which independently immunize
24 YouTube here.

1. YouTube is immunized by Section 230(c)(1) because its removal of Plaintiff's video is quintessential "publisher" activity.

26 Section 230(c)(1) provides that “[n]o provider or user of an interactive computer
27 service shall be treated as the publisher or speaker of any information provided by
28

1 another information content provider.” 47 U.S.C. § 230(c)(1). The Ninth Circuit employs
 2 a three-part test for determining immunity under Section 230(c)(1). *Dyroff v. Ultimate*
 3 *Software Grp., Inc.*, 934 F.3d 1093, 1097 (9th Cir. 2019). “Immunity from liability exists for
 4 (1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to
 5 treat, under a state law cause of action, as a publisher or speaker (3) of information
 6 provided by another information content provider.” *Id.* (cleaned up).

7 That YouTube satisfies the first and third elements of *Dyroff* here cannot credibly
 8 be disputed. Under the first element, youtube.com is undeniably a “service, system, or
 9 access software . . . that provides or enables computer access by multiple users to a
 10 computer server[.]” 47 U.S.C. § 230(f)(2); *see also Divino Grp., LLC v. Google LLC*, No. 19-
 11 cv-04749, 2022 WL 4625076, at *16 (N.D. Cal. Sept. 30, 2022) (collecting cases in the Ninth
 12 Circuit recognizing same for YouTube). And Plaintiff is undeniably the “[o]ther
 13 information content provider” under the third element. *See, e.g., Sikhs for Just. “SFJ”, Inc.*
 14 *v. Facebook, Inc.*, 144 F. Supp. 3d 1088, 1093-94 (N.D. Cal. 2015) (“[O]nly Plaintiff, not
 15 Defendant, acts as an information content provider in this case. As a result, the SFJ Page,
 16 which was created entirely by Plaintiff, is ‘information provided by another information
 17 content provider’ within the meaning of § 230.”), *aff’d*, 697 F. App’x 526 (9th Cir. 2017).

18 Accordingly, here, the dispositive question is “whether the duty that the plaintiff
 19 alleges the defendant violated derives from the defendant’s status or conduct as a
 20 ‘publisher or speaker.’” *Calisle v. Meta Platforms, Inc.*, 103 F.4th 732, 740 (9th Cir. 2024).
 21 “If it does, § 230(c)(1) precludes liability.” *Id.* “[P]ublication involves reviewing, editing,
 22 and deciding whether to publish or to withdraw from publication third-party content.”
 23 *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1102 (9th Cir. 2009). It follows that “any activity that
 24 can be boiled down to deciding whether to exclude material that third parties seek to
 25 post online is perforce immune under section 230.” *Id.* at 1103 (quoting *Fair Hous. Council*
 26 *v. Roommates.com, LLC*, 521 F.3d 1157, 1170-71 (9th Cir. 2008)). This necessarily includes
 27 “decisions to remove, restrict, or demonetize [YouTube] videos[.]” *Divino Grp.*, 2022 WL
 28

1 4625076, at *16 (recognizing CDA immunity for YouTube against UCL claim arising out
 2 of YouTube's removal of videos from platform).

3 This case presents a textbook application of Section 230(c)(1). Plaintiff asserts a
 4 single cause of action against YouTube, under the UCL, arising out of YouTube's
 5 removal of his Batman video from the platform. 4AC at 20. Unsurprisingly, this Court
 6 recognized just a few months ago that YouTube was entitled to CDA immunity on
 7 virtually identical facts. *Hall*, 2025 WL 1482007, at *7 (dismissing action by "content
 8 creator" plaintiff who brought state law claims for YouTube's alleged "mishandl[ing]"
 9 of DMCA takedown notices and reinstatements). "[R]emoving content is something
 10 publishers do . . ." *Barnes*, 570 F.3d at 1103. Plaintiff may attempt to couch his UCL
 11 claim as arising from other YouTube actions, such as: failing to immediately notify
 12 Plaintiff of claimed infringement (4AC at 20); failing to process a counternotice quickly
 13 enough (4AC at 19); failing to sufficiently employ "content-detection" methods (*id.*); or
 14 having some sort of conspiratorial relationship with Warner Bros. (4AC at 20). But "no
 15 amount of careful pleading can change the fact that, in substance, plaintiff[] aim[s] to
 16 hold [YouTube] liable as a publisher . . . and that such liability is barred by the CDA."
 17 *Fields v. Twitter, Inc.*, 217 F. Supp. 3d 1116, 1118 (N.D. Cal. 2016) (Orrick, J.), *aff'd*, 881
 18 F.3d 739 (9th Cir. 2018). All of Plaintiff's ancillary allegations arise from—and would be
 19 utterly irrelevant without—Plaintiff's core complaint that YouTube removed his video.
 20 *See, e.g.*, 4AC at 20-21 (all of Plaintiff's alleged "injuries" arise out of his video being
 21 removed from "the platform for an important period of time"). "YouTube's
 22 management—or mismanagement—of user-generated videos . . . is at the heart of, and is
 23 protected by, Section 230." *Hall*, 2025 WL 1482007, at *7.

24 **2. YouTube is immunized by Section 230(c)(2) because potentially
 25 liability-creating content is "objectionable."**

26 Section 230(c)(2) provides that no provider of an interactive computer service
 27 shall be held liable for "any action voluntarily taken in good faith to restrict access to or
 28 availability of material that the provider . . . considers to be . . . objectionable, whether or

1 not such material is constitutionally protected[.]” 47 U.S.C. § 230(c)(2). This immunity
 2 “further encourages good samaritans by protecting service providers . . . from liability
 3 for claims arising out of the removal of potentially ‘objectionable’ material from their
 4 services.” *Batzel v. Smith*, 333 F.3d 1018, 1030 n.14 (9th Cir. 2003), superseded in part on
 5 other grounds by statute as stated in *Breezeale v. Victim Servs., Inc.*, 878 F.3d 759, 766–67 (9th
 6 Cir. 2017). “This provision insulates service providers from claims premised on the
 7 taking down of a customer’s posting such as breach of contract or unfair business
 8 practices.” *Id.* (citation omitted). In tandem with Section 230(c)(1), the removal immunity
 9 of 230(c)(2) is “intended to spare interactive computer services the grim choice between
 10 voluntarily filtering content and being subject to liability on the one hand, and ignoring
 11 all problematic posts altogether to escape liability.” *HomeAway.com, Inc. v. City of Santa
 12 Monica*, 918 F.3d 676, 684 (9th Cir. 2019) (cleaned up).

13 Plaintiff seeks to subject YouTube to an even grimmer game of “pick your
 14 plaintiff.” Plaintiff alleges that YouTube received a “notice of claimed infringement”
 15 about Plaintiff’s video. 4AC at 12. At that point, YouTube could either:

- 16 1) maintain that video, ignoring a DMCA infringement notice from a corporation
 17 that is “highly sophisticated on copyright law,” (4AC at 12), or
 18 2) remove that video, thereby triggering Plaintiff’s claim.

19 Were that plaintiffs’ bar fever dream to become a reality, every interactive computer
 20 service would risk facing suit for routine removal decisions. Instead, YouTube’s decision
 21 to remove a video in response to a DMCA takedown request is entirely immunized. It is
 22 immunized by the DMCA, *infra* at Part II.B., and it is immunized by the CDA, because it
 23 has taken a good faith action to remove material that it considers to be objectionable by
 24 virtue of: (1) the fact that a third party has written to YouTube *specifically requesting* that
 25 the material be removed; and (2) YouTube’s failure to remove that material could subject
 26 YouTube to liability for secondary copyright infringement. *See, e.g., Perfect 10, Inc. v.*
 27 *Yandex N.V.*, No. C 12-01521 WHA, 2013 WL 1899851 (N.D. Cal. May 7, 2013) (allowing
 28

1 action by copyright owner to continue against search engine arising out of search
 2 engine's decision to continue hosting copyrighted materials after receipt of DMCA
 3 notices).

4 **B. YouTube is immunized from Plaintiff's UCL claim by the DMCA.**

5 The DMCA states that "service provider[s] shall not be liable to any person for
 6 any claim based on the service provider's good faith disabling of access to, or removal
 7 of, material or activity claimed to be infringing." 17 U.S.C. § 512(g)(1). Courts readily
 8 dismiss complaints that explicitly bring claims against a service provider that arise out
 9 of the disabling or removal of allegedly infringing content. *See, e.g., Long v. Dorset*, 369 F.
 10 Supp. 3d 939, 946 (N.D. Cal. 2019) (dismissing DMCA claims against service providers
 11 based on allegedly improper handling of takedown notices, and recognizing that "the
 12 purpose of the DMCA would be undermined if the issue of expeditiousness could not be
 13 resolved, when appropriate, as a matter of law"), *aff'd*, 854 F. App'x 861 (9th Cir. 2021),
 14 *and vacated in part on other grounds*, No. 17-CV-02758-PJH, 2021 WL 7829668 (N.D. Cal.
 15 May 21, 2021).

16 Here, Plaintiff admits that YouTube meets the DMCA's definition of a "service
 17 provider," *see* 4AC at 11 (describing claim against Warner Bros. in context of its effect on
 18 YouTube as "service provider"), and the Complaint makes clear that all of Plaintiff's
 19 UCL claim consists entirely of allegations regarding YouTube's temporary disabling of
 20 his video pursuant to the DMCA. *See, e.g.*, 4AC at 19 ("YouTube failed to process and
 21 respect the counternotice when filed"); *id.* at 20 ("[O]nce Warner withdrew the
 22 notice of claimed infringement, YouTube failed to make Mr. Sosa whole for the
 23 withdrawn claim"); *id.* ("YouTube failed to immediately transfer the notice of
 24 claimed infringement (as it was filed) to Mr. Sosa").

25 Section 512(g)(2) does provide various exceptions to the service provider
 26 immunity but Plaintiff has not alleged any facts showing these exceptions apply. Nor
 27 would it be appropriate for Plaintiff to argue that the burden is on YouTube to establish
 28

1 that an exception does *not* apply here. Courts are wary of copyright plaintiffs who craft
 2 barebones complaints to skirt consideration of the immunity issue and regularly dismiss
 3 cases where the plaintiff failed to allege “even the most basic . . . facts” of a service
 4 provider’s conduct. *Casterlow-Bey v. Google.com Inc.*, No. 17-CV-05686-RJB, 2017 WL
 5 6732787, at *5 (W.D. Wash. Dec. 29, 2017). For example, in *Blocker v. Black Entertainment*
 6 *Television, LLC*, No. 3:17-CV-01406-AC, 2018 WL 3797568 (D. Or. June 26, 2018), *report*
 7 *and recommendation adopted*, No. 3:17-CV-01406-AC, 2018 WL 3795219 (D. Or. Aug. 8,
 8 2018), the court found that the defendant service provider was immune from liability
 9 because the plaintiff “fail[ed] to allege whether or when he sent take-down notices” and
 10 “whether or what responses he received.” *Id.* at *5. In line with the Ninth Circuit’s artful
 11 pleading doctrine for federal question jurisdiction, Plaintiff should not be permitted to
 12 dodge plain statutory immunity provided under a federal law by simply omitting
 13 allegations relevant to an obviously applicable federal immunity. *Easton v. Crossland*
 14 *Mortg. Corp.*, 114 F.3d 979, 982 (9th Cir. 1997) (“A plaintiff may not avoid federal
 15 jurisdiction by omitting from the complaint federal law essential to his or her claim or by
 16 casting in state law terms a claim that can be made only under federal law.”). Among
 17 other critical omissions, Plaintiff has left out core allegations about the timings of
 18 Warner Bros.’ takedown request, YouTube’s removal of the video, Plaintiff’s
 19 counternotice, Warner Bros.’ retraction of its takedown notice, and YouTube’s
 20 reinstatement of Plaintiff’s video on the platform.

21 **C. Even if the DMCA does not immunize YouTube’s conduct here, the**
 22 **DMCA necessarily preempts Plaintiff’s state-law claim.**

23 Federal law preempts state law claims where “the scheme of federal regulation is
 24 sufficiently comprehensive to make reasonable the inference that Congress left no room
 25 for supplementary state regulation.” *Cinq Music Grp., LLC v. Create Music Grp., Inc.*, No.
 26 22-CV-07505, 2023 WL 4157446, at *2 (C.D. Cal. Jan. 31, 2023) (quoting *Hillsborough*
 27 *County v. Automated Med. Lab’ys, Inc.*, 471 U.S. 707, 713 (1985)). Broadly, “[f]ederal law’s
 28 near total occupation of the field of copyright law . . . supports an inference that . . . the

1 federal system will be assumed to preclude enforcement of state laws on the same
 2 subject." *Id.* at *2 (C.D. Cal. Jan. 31, 2023). Consequently, "[n]umerous courts within the
 3 9th Circuit" have concluded that "the DMCA preempts state law claims based on
 4 DMCA takedown notifications." *Moonbug Ent. Ltd. v. Babybus (Fujian) Network Tech. Co.,*
 5 No. 21-CV-06536-EMC, 2022 WL 580788, at *13 (N.D. Cal. Feb. 25, 2022); *see Stardock Sys.,*
 6 *Inc. v. Reiche*, No. C 17-07025 SBA, 2019 WL 8333514, at *4 (N.D. Cal. May 14, 2019)
 7 ("Courts in this district have found that the DMCA preempts state law claims arising out
 8 of the submission of infringement notices."); *Beyond Blond Prods., LLC v. Heldman*, No.
 9 20-CV-5581, 2020 WL 4772796, at *3 (C.D. Cal. Aug. 17, 2020) (same); *Amaretto Ranch*
 10 *Breedables, LLC v. Ozimals, Inc.*, No. C 10-05696 CRB, 2011 WL 2690437, at *3 (N.D. Cal.
 11 July 8, 2011) (finding that the DMCA "regime preempts any state law claim based on an
 12 allegedly improper DMCA Takedown Notification"). Congress made its intention to
 13 exclusively occupy this subject clear when enacting the DMCA's "complex and
 14 comprehensive statutory regime that meticulously details the steps that providers must
 15 take to avoid liability and that copyright holders must take to enforce their rights." *Cinq*,
 16 2023 WL 4157446, at *2. Various courts have held that, given this comprehensive
 17 scheme, the DMCA provides "the sole remedy for a customer who objects to its contents
 18 and their effects." *Amaretto Ranch Breedables*, 2011 WL 2690437, at *4 (emphasis added)
 19 (quoting *Lenz v. Universal Music Corp.*, No. C 07-03783 JF, 2008 WL 962102, at *4 (N.D.
 20 Cal. Apr. 8, 2008)). In fact, the Ninth Circuit has concluded that federal law that
 21 comprehensively regulates a subject matter preempts state law on the same subject
 22 matter, even if the "state law provisions did not deal with rights equivalent to those
 23 found in [the federal law]." *Lenz*, 2008 WL 962102, at *4.³

24

25

26 ³ This exclusive federal scheme governs the specific statutory process for takedown and
 27 reinstatement and does not supplant a platform's separate, broader rights concerning its
 28 removal or hosting of content as governed by its Terms of Service or other agreements.
See infra n.5.

1 Plaintiff's UCL claim arises entirely from YouTube's actions in removing content
 2 pursuant to the DMCA's statutory scheme. *See* 4AC at 10, 12, 20-21. He complains about
 3 how long it took YouTube to provide him with a notice of infringement, or how quickly
 4 YouTube acted in processing a counternotice, or about the "footing" upon which
 5 YouTube placed that video after reinstatement. 4AC at 20. All of these allegations relate
 6 to topics expressly covered by the DMCA, which dictates how service providers are
 7 required to issue notice to an alleged infringer, what service providers should do with
 8 counternotices, and how providers should "replace[] the removed material[.]" 17 U.S.C.
 9 § 512(g)(2). The DMCA provides a comprehensive federal scheme for the takedown and
 10 reinstatement of allegedly infringing content, and thus Plaintiff's UCL claim based on
 11 such conduct is preempted.

12 **D. Plaintiff has not adequately alleged a UCL claim.**

13 To survive the pleadings stage, the "factual allegations [in the complaint] 'must . . .
 14 . suggest that the claim has at least a plausible chance of success.'" *Levitt v. Yelp! Inc.*, 765
 15 F.3d 1123, 1135 (9th Cir. 2014) (quoting *In re Century Aluminum Co. Sec. Litig.*, 729 F.3d
 16 1104, 1107 (9th Cir. 2013)). "A claim has facial plausibility when the plaintiff pleads
 17 factual content that allows the court to draw the reasonable inference that the defendant
 18 is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
 19 *Atl. Corp. v. Twombly*, 550 U.S. 544 556 (2007)). The court "accept[s] factual allegations in
 20 the complaint as true and construe[s] the pleadings in the light most favorable to the
 21 nonmoving party." *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th
 22 Cir. 2008). But the court is not "required to accept as true allegations that are merely
 23 conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead*
 24 *Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (citations omitted).

25 Plaintiff has failed to meet those standards for at least two reasons. First, he has
 26 not articulated any "plausible claim for relief" (*Iqbal*, 556 U.S. at 679) because damages
 27 and attorneys fees are not available under the UCL and he lacks both Article III and

1 statutory standing to pursue equitable relief under the statute. And second, he has not
 2 adequately alleged that YouTube acted “unfairly” under the UCL, particularly because
 3 YouTube’s alleged conduct is expressly permitted by federal law.

4 **1. Plaintiff cannot maintain his requested relief under the UCL.**

5 “A UCL action is equitable in nature; damages cannot be recovered.” *Korea Supply*
 6 *Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1144 (2003); *Weizman v. Talkspace, Inc.*, 705
 7 F. Supp. 3d 984, 989 (N.D. Cal. 2023) (citing *Korea Supply* in holding same). “Under the
 8 UCL, a private plaintiff’s remedies are limited to injunctive relief and restitution.” *Duste*
 9 *v. Chevron Prods. Co.*, 738 F. Supp. 2d 1027, 1047 (N.D. Cal. 2010); *see also* *Korea Supply*, 29
 10 Cal. 4th at 1144 (“Prevailing plaintiffs are generally limited to injunctive relief and
 11 restitution.” (cleaned up)). Attorney fees are not available under the UCL. *Gill v. Marsh*
 12 *USA, Inc.*, No. 24-cv-02366-RS, 2024 WL 3463351, at *6 (N.D. Cal. July 18, 2024)
 13 (dismissing UCL claim because plaintiff “failed to plead the appropriate remedy,” and
 14 striking request for attorney fees because they are not permitted under the UCL).

15 Restitution under the UCL is defined as “compelling a UCL defendant to return
 16 money obtained through an unfair business practice to those persons in interest from
 17 whom the property was taken, that is, to persons who had an ownership interest in the
 18 property or those claiming through the person.” *Stanford Health Care v. Trustmark Servs.*
 19 *Co.*, No. 22-cv-03946-RS, 2023 WL 2743581, at *4 (N.D. Cal. Mar. 31, 2023) (quoting *Korea*
 20 *Supply*, 29 Cal. 4th at 1144-45) (additional quotations omitted). This requires that the
 21 UCL plaintiff seek “money . . . obtained by Defendants from Plaintiff in the first place.”
 22 *Id.* (cleaned up). Where a plaintiff fails to state a cognizable remedy under the UCL, the
 23 UCL claim should be dismissed. *Id.*

24 Here, Plaintiff makes much ado about lost money or property, ostensibly to
 25 establish statutory standing under the UCL. For example, the Fourth Amended
 26 Complaint is concerned about the loss of monetized views, loss of return views, and a
 27 loss of good will with his existing viewers. 4AC at 20-21. But Plaintiff’s ability to contrive

1 arguments about “lost money” do not make that lost money recoverable under the UCL;
 2 those are inherently non-restitutionary damages requests because they do not describe
 3 money obtained by YouTube from Plaintiff. Plaintiff’s request for attorneys’ fees falls
 4 similarly flat under the UCL.

5 As a result, Plaintiff is left only with his vague requests for “appropriate
 6 injunctive relief” and “declaratory relief.” Here he encounters two dispositive threshold
 7 issues. First, he has failed to sufficiently allege Article III standing to pursue injunctive
 8 relief under the UCL. *Freeman v. ABC Legal Servs., Inc.*, 877 F. Supp. 2d 919, 926 (N.D. Cal.
 9 2012). Injunctive relief,⁴ which is a prospective remedy, requires that the threat of injury
 10 be “actual and imminent, not conjectural or hypothetical.” *Davidson v. Kimberly-Clark*
 11 *Corp.*, 889 F.3d 956, 967 (9th Cir. 2018) (citations omitted). In other words, the
 12 “threatened injury must be certainly impending to constitute injury in fact” and
 13 “allegations of possible future injury are not sufficient.” *Id.* (citations omitted). The 4AC
 14 does not offer a single allegation about a threat of future injury.

15 Second, to seek *any* relief under the UCL, Plaintiff must allege that he lacks an
 16 adequate remedy at law. *Sonner v. Premier Nutrition Corp.*, 971 F. 3d 834, 844 (9th Cir.
 17 2020) (“Sonner must establish that she lacks an adequate remedy at law before securing
 18 equitable restitution for past harm under the UCL”). This is an independent, black-
 19 letter basis for dismissing the case. *Weizman*, 705 F. Supp. 3d at 990 (“[C]ourts in this
 20 District have generally required that plaintiffs at least allege the lack of a remedy at law
 21 when asserting a UCL claim.”). That will be a particularly difficult allegation for Plaintiff
 22 to make here consistent with Rule 11, where his prior complaints alleged copyright
 23 claims (Doc. 51) and Plaintiff’s counsel has threatened to assert a breach of contract
 24 claim based on YouTube’s terms of service. That Plaintiff’s other adequate remedies at
 25 law would also fail or be dismissed at the Rule 12 stage is of no import to this analysis.

26
 27 ⁴ A request for declaratory relief likewise requires Plaintiff to allege a threatened
 28 continuing or future violation of the law, which is nonexistent in the 4AC. *Bayer v. Neiman Marcus Grp., Inc.*, 861 F.3d 853, 868 (9th Cir. 2017).

1 *Key v. Qualcomm Inc.*, 129 F.4th 1129, 1142 (9th Cir. 2025) (affirming disposal of UCL
 2 claim where adequate remedy at law existed, even if Plaintiff could not achieve that
 3 adequate remedy).

4 **2. Plaintiff has not adequately alleged that YouTube acted unfairly
 5 under the UCL.**

6 “Specific legislation may limit the judiciary’s power to declare [business] conduct
 7 unfair. If the Legislature has permitted certain conduct . . . courts may not override that
 8 determination.” *Cel-Tech Commc’ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 182
 9 (1999). Here, the DMCA expressly permits what YouTube is alleged to have done. First,
 10 it immunizes YouTube’s removal of content where YouTube received an infringement
 11 notice. *Supra*, Part II.B.. And second, it expressly describes the steps that a platform must
 12 take after it receives a counter-notice. 17 U.S.C. § 512(g)(2). If Plaintiff cannot plausibly
 13 allege that YouTube took any steps inconsistent with that statutory schema, his UCL
 14 unfairness claim must fail under *Cal-Tech*.

15 This case is similar to *McCann v. Lucky Money, Inc.*, 129 Cal. App. 4th 1382, 1387
 16 (2005). There, the plaintiffs sought to impose liability under the UCL for conduct that
 17 was regulated by California’s Money Transmission Law, Cal. Fin. Code § 1800 *et seq.*,
 18 which lacked a private right of action. *See McCann*, 129 Cal. App. 4th at 1395. The court
 19 held that “[t]he fact that California’s comprehensive regulation of Defendants’ practices
 20 does not label the challenged practices unfair is a . . . defense to any such claim,” *id.*, and
 21 therefore dismissed the UCL claim. The result here should be the same: because the
 22 DMCA regulates the very conduct on which Plaintiff bases his claim and does not label
 23 it unfair, and because the DMCA lacks a private right of action for violating its put-back
 24 procedures, Plaintiff cannot base his UCL claim on the threadbare content reinstatement
 25 allegations found his complaint.

26 Even if the DMCA did not expressly permit the conduct upon which Plaintiff
 27 bases his UCL claim, the complaint also fails to allege facts sufficient to state a claim for
 28

1 UCL “unfairness” under either test that this court would use to make that
 2 determination.

3 “There are two possible tests to apply.” *Kellman v. Spokeo*, 599 F. Supp. 3d 877, 896
 4 (N.D. Cal. 2022) (Orrick, J.). Under the first, an “unfair” practice is that which “offends
 5 an established public policy or when the practice is immoral, unethical, oppressive,
 6 unscrupulous or substantially injurious to consumers.” Under the other, it is “conduct
 7 that threatens an incipient violation of an antitrust law, or violates the policy or spirit of
 8 one of those laws because its effects are comparable to or the same as a violation of the
 9 law, or otherwise significantly threatens or harms competition.” But courts have divided
 10 over whether or how this second test applies to actions by consumers rather than
 11 competitors. *See Davis v. HSBC Bank Nev.*, N.A., 691 F.3d 1152, 1170 (9th Cir. 2012).
 12 *Id.* (quoting *Hodson v. Mars, Inc.*, 891 F.3d 857, 866 (9th Cir. 2018)).

13 Under either test, Plaintiff has not alleged sufficient facts to suggest that
 14 YouTube’s conduct was “unfair” under the UCL. In fact, the 4AC complains only of
 15 conduct isolated to Plaintiff’s single video. *See* 4AC at 19-20. Complaint about an
 16 isolated incident is not a complaint about a “practice” under the UCL at all,⁵ and is
 17 certainly not an allegation about an “immoral” practice that is “substantially injurious to
 18 consumers” or that “harms competition.” Plaintiff’s only allegation even *aimed* at the
 19 appropriate target is a single sentence about how YouTube’s relationship with Warner
 20 Bros. “prioritize[s] Warner and YouTube’s business interests over other creators in a
 21 manner that produces unfair competitive effects against smaller creators.” 4AC at 20.

22 ⁵ In fact, Plaintiff has already recognized such a removal (or failure to reinstate) to be
 23 entirely fair. To upload a video to YouTube, Plaintiff must have agreed to YouTube’s
 24 terms of service, which provide that YouTube has “no obligation to host or serve
 25 Content,” as well as the right, at its discretion, to remove a user’s content where that
 26 content may “cause harm to YouTube … or third parties.” YouTube’s terms are available
 27 at <https://www.youtube.com/static?template=terms>, and the Court may take judicial
 28 notice of such terms at the pleadings stage. *See Lloyd v. Facebook, Inc.*, No. 21-cv-10075-
 EMC, 2022 WL 4913347, at *4 (N.D. Cal. Oct. 3, 2012) (taking judicial notice of Facebook’s
 terms of service because it was a “publicly accessible webpage[],” the authenticity of
 which was not contested).

1 That allegation is not even an allegation of misconduct. But even if it were, Plaintiff has
 2 not pleaded the “who, what, when, where, and how of the alleged misconduct,” nor has
 3 he explained how YouTube’s business practices “rise to the level of immoral, unethical,
 4 oppressive, unscrupulous, or substantially injurious practices.” *Meyer v. Aabaco Small*
 5 *Bus., LLC*, No. 5:17-cv-02102-EJD, 2018 WL 306688, at *4-5 (N.D. Cal. Jan. 5, 2018)
 6 (dismissing at 12(b)(6) stage a UCL unfairness claim that alleged conclusory unfairness,
 7 as here); *see also West v. PBC Mgmt. LLC*, 754 F. Supp. 3d 914, 924 (N.D. Cal. 2024) (same).

8 **E. Amendment to identify the YouTube Does would be futile.**

9 Plaintiff need not be given an opportunity to identify and name the YouTube Doe
 10 defendants, because they would succeed on all of the same arguments asserted above.
 11 *Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999) (dismissal of Doe defendants
 12 prior to identification is appropriate where “complaint would be dismissed” even after
 13 identification). Those Does enjoy the same immunities and rights under the CDA and
 14 DMCA as enjoyed by YouTube. *See, e.g., Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1090-91 (9th
 15 Cir. 2021) (CDA immunizes “individuals or entities that operate internet platforms”
 16 (emphasis added)); *Klayman v. Zuckerberg*, 753 F.3d 1354, 1357-58 (D.C. Cir. 2014)
 17 (similarly recognizing that employees are “providers” of interactive computer services
 18 under the CDA); *Hendrickson v. eBay, Inc.*, 165 F. Supp. 2d 1082, 1094-95 (C.D. Cal. 2001)
 19 (“To hold that the safe harbor provision of the DMCA protects the company but not its
 20 employees for the same alleged bad acts would produce an absurd result.”).

21 Moreover, individual liability under the UCL is permitted only where “the
 22 underlying cause of action can be alleged against them.” *Russo v. Fed. Med. Servs., Inc.*,
 23 744 F. Supp. 3d 914, 924 (N.D. Cal. 2024) (dismissing individual defendant where
 24 complaint lacked UCL allegations specific to him); *see also Jeske v. Maxim Healthcare*
 25 *Servs., Inc.*, No. CV F 11-1838 LJO JLT, 2012 WL 78242, at *20 (E.D. Cal. Jan. 10, 2012)
 26 (dismissing UCL claims against individual managers and supervisors because the
 27 complaint lacked facts specific to those individuals). The 4AC does not contain a single

1 allegation specific to any YouTube individual. As a result, even if Plaintiff *had* alleged a
2 viable UCL claim against YouTube (and he has not, for at least the many reasons
3 articulated above), Plaintiff could not maintain such a claim against any YouTube
4 employees such that amendment to name them would be futile.

5 **IV. CONCLUSION**

6 For the foregoing reasons, YouTube and the YouTube Does should be dismissed
7 from the case and leave to amend need not be granted as amendment would be futile.

8
9 Dated: August 20, 2025 PERKINS COIE LLP

10 By: */s/ Hayden M. Schottlaender*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served via the court's electronic filing system on this 20th day of August, 2025.

/s/ Hayden M. Schottlaender
Hayden M. Schottlaender